Filed 2/5/03 In re Jermaine L. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re JERMAINE L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JERMAINE L., Defendant and Appellant.	E032019 (Super.Ct.No. J180682) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Katrina West, Judge. Affirmed.

John E. Roth, Public Defender, and Michael J. Kennedy, Deputy Public Defender, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Raquel M. Gonzalez,

Supervising Deputy Attorney General, and John T. Swan, Deputy Attorney General for Plaintiff and Respondent.

As alleged in a subsequent Welfare and Institutions Code section 602[1] petition, minor admitted that he threatened a public official (Pen. Code, § 71). Following a dispositional hearing, the deferred entry of judgment for an earlier petition was revoked, and minor was declared a ward of the court and placed on probation under various terms and conditions. Minor's sole contention on appeal is that two of his gang-related probation conditions are unreasonable and unconstitutionally vague, overbroad, and illegal. We reject this contention and affirm the judgment below.

I

FACTUAL BACKGROUND[2]

On the morning of April 17, 2002, minor swore at his teacher and threatened him with physical harm after the teacher told him to move to a different seat. He also threatened to return the same day to carry out his threats. When minor attempted to re-enter the classroom, he had to be restrained by school staff. He threatened them and quoted his gang affiliation. Minor subsequently admitted to being a member of, or associate of, the East Coast Crips.

---

[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] The factual background from the April 17, 2002, incident is taken from the May 21, 2002, probation report. The factual background from the February 20, 2002, incident is taken from the March 22, 2002, probation report.

The basis for the earlier adjudication of deferred entry of judgment occurred on February 20, 2002. On that day, after minor became upset and angry for losing points for vulgar language during class, he refused to calm down and eventually threatened the teacher's aide with physical harm. A campus aide was summoned to the classroom to help with the irate minor. When the campus aide arrived, minor was in a rage and threatening everyone in the classroom with physical harm. He also made similar threats to the campus aide. When the campus aide tried to reason with minor, minor threatened to kill him if he approached or touched him. School police officers eventually arrived, and they removed minor from the classroom without force. However, minor continued to threaten to kill and "fuck up" everyone.

II

DISCUSSION

Minor contends the probation conditions imposed upon him by the juvenile court which provide that he not associate or communicate with anyone specifically disapproved of by the probation officer (condition 9) and that he not appear at any court building (condition 30) are overbroad, vague, ambiguous, and illegal. We disagree.

At the time of the dispositional hearing, the juvenile court imposed the following probation conditions, as recommended by the probation officer, among others: "9. Not associate or communicate with anyone specifically disapproved by the probation officer. . . . [¶] . . . [¶] 30. Not appear at any court building, including the lobby, hallway, courtroom, or parking lot, unless he/she is a party, defendant or subpoenaed as a

witness to a court proceeding." Minor objected to these conditions at the time of the dispositional hearing.

The juvenile court has broad discretion in establishing conditions of probation, and its discretion will not be disturbed on appeal in the absence of manifest abuse. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 940; *In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) "The court may impose 'any . . . reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' [Citation.] [¶] In an adult setting, '[a] condition of probation which (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality does not serve the statutory ends of probation and is invalid.' [Citations.]" (*In re Antonio R.*, *supra*, at p. 940) "All three requirements must be met before the condition is invalidated. [Citation.]" (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242.)

Juvenile conditions may be broader than those pertaining to adult offenders. (*In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.) Juveniles are deemed to be more in need of guidance and supervision than adults. (*Ibid*.) The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents, and a parent may curtail a child's exercise of constitutional rights. (*Ibid*.) The juvenile court cannot reasonably be expected to define with precision all classes of persons which might influence a minor to commit further bad acts. (*In re Frank V.*, *supra*, 233 Cal.App.3d at p. 1243.) Instead, the courts rely on the

discretion of the probation department to promote and nurture a minor's rehabilitation. (*Ibid*.) Furthermore, in view of the unique role of the juvenile court in caring for the minor's well-being, it must consider "not only the circumstances of the crime but also the minor's entire social history" in fashioning conditions of probation. (*In re Todd L.* (1980) 113 Cal.App.3d 14, 20.)

Minor attacks the two gang-related conditions, claiming the conditions are vague and overbroad, not related to him or his crimes, and against public policy as he was not found guilty of gang membership or vandalizing a courthouse. We find minor's arguments unpersuasive.

Although minor was not found guilty of gang membership or vandalizing a courthouse, the record clearly shows that minor was involved with a gang. In fact, he included his gang affiliation as part of his threats on April 17, 2002. He also admitted to the probation officer that he was a member or associate of the gang called the East Coast Crips. Moreover, minor made his gang affiliation and involvement known when he was detained in juvenile hall, and it had a negative effect on his behavior there.

Under Penal Code section 186.22, an individual's active participation in a street gang, defined as a criminal enterprise, is a crime. The Legislature noted "that the State of California is in a state of crisis which has been caused by violent street gangs whose . . . activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected." (Pen. Code, § 186.21.) It is well understood that "[a]ssociation with gang members is the first step to involvement in gang

activity." (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1501, disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962.) "Evidence of current gang membership is not a prerequisite to imposition of [gang-related] conditions designed to steer minors from [a] destructive path." (*In re Laylah K.*, *supra*, at p. 1502.)

Probation condition No. 9, which requires minor to "[n]ot associate or communicate with anyone specifically disapproved by the probation officer," restricts minor's contact with persons the probation officer believes will improperly influence him to commit bad acts. (*In re Frank*, *supra*, 233 Cal.App.3d at p. 1243.) Having the probation officer restrict minor's contact with individuals who will improperly influence him is reasonably related to minor's future criminality and will further minor's reformation and rehabilitation. (*In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 940.) We disagree with the court in *In re Kacy S.* (1998) 68 Cal.App.4th 704 that such a condition is unjustifiable and "a sweeping limitation on [minor's] liberty."[3] (*Id*. at p. 713.) Because of minor's history of gang involvement, membership and/or association with known gang members, and his history of violent delinquent behavior, we find that a

---

[3] Furthermore, as the People point out, minor's reliance on *In re Kacy S.*, *supra*, 68 Cal.App.4th 704 is misplaced. The term of probation found overbroad in that case required that the minor "not associate with any persons *not approved* by his probation officer." (*Id*. at p. 712, italics added.) The term in *Kacy S.* prohibited association unless the probation officer approved of the person. In this case, the term prohibits association only if the probation officer has *specifically disapproved* of the person. In other words, there is no prohibition on association here unless and until the probation officer informs minor a specified person is off limits.

condition restricting his freedom of association is reasonably related to his potential for future criminality and was properly imposed.

"Conditions which infringe on constitutional rights are not automatically invalid. Certain intrusions by government which would be invalid under traditional constitutional concepts may be reasonable at least to the extent that such intrusions are required by legitimate governmental demands." (*In re White* (1979) 97 Cal.App.3d 141, 149-150.) "Even conditions which infringe on constitutional rights may not be invalid if tailored specifically to meet the needs of the juvenile [citation]." (*In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616.) The conditions here were clearly directed at the problem of future criminality posed by minor's gang identification and were narrowly drawn to address that issue. "This court has previously held that probation conditions designed to curb dangerous associations with gangs were not unreasonable. . . . [¶] Conditions of probation requiring a probationer not to associate with anyone who possesses a criminal record have been upheld as 'reasonably related to avoidance of future criminality.' [Citation.] And a court may certainly order a probationer to refrain from criminal activity of any sort." (*In re Laylah K.*, *supra*, 229 Cal.App.3d 1496, 1501.)

"[T]he void for vagueness doctrine applies to conditions of probation. [Citations.] An order must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325; accord *People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) The challenged conditions are sufficiently precise to inform

minor what is required of him and to allow the court to determine when a violation has occurred. (*People v. Lopez*, *supra*, 66 Cal.App.4th at p. 630; *In re Jason J.* (1991) 233 Cal.App.3d 710, 719, overruled on other grounds in *People v. Welch* (1993) 5 Cal.4th 228, 237.)

Minor's arguments to the contrary are unpersuasive. It strains credulity to believe that minor "accidentally" would have contact with members of a gang, drug users, or other delinquent persons he knows are specifically disapproved of by his probation officer. The challenged condition does not require minor, who is currently 16 years old, to guess what is and what is not inappropriate.

As stated above, the terms of the condition must only be specific enough to inform minor what is required of him and for the court to ascertain whether a violation has occurred. (*People v. Reinertson*, *supra*, 178 Cal.App.3d at pp. 324-325.) Here, the condition prohibits minor from having "contact" or associating with persons disapproved of by his probation officer. "Association" denotes involvement or a relationship more substantial than a chance meeting. The condition does not prohibit minor from simply speaking with teachers or similarly situated persons, as the court in *Kacy S.* suggests. (See *In re Kacy S.*, *supra*, 68 Cal.App.4th at pp. 712-713.) The condition here gives the probation officer the flexibility to prohibit minor from associating with any individual who may increase the likelihood of minor's participation in criminal activity, without requiring the probation officer to approve of minor's communications with harmless persons, such as grocery store clerks, mail carriers, and health care workers. (See *ibid*.)

The condition is clearly directed at limiting minor's association with people of whom his probation officer disapproves and is therefore not vague or overbroad, as minor suggests.

Indeed, condition Nos. 9 and 30 to probation are not new and have been approved in *In re Michael D.*, *supra*, 214 Cal.App.3d 1610, 1617 and *In re Laylah K*, *supra*, 229 Cal.App.3d 1496, 1502. In fact, similar "gang related" probation conditions have withstood challenges that they were unconstitutional, vague, and overbroad. (*In re Michael D.*, *supra*, at pp. 1616-1617.)

"Precluding the minors' presence at known gang gathering areas and association with gang members is reasonably designed to direct the minors away from gang activity, as is the prohibition against wearing gang clothing. The restriction on court attendance is aimed at preventing the gathering of gang members to intimidate witnesses at court proceedings. And, '[g]ang activities and weapon possession go hand-in-hand.' [Citation.] All these conditions are reasonably designed to address the problem of gang affiliation." (*In re Laylah K.*, *supra*, 229 Cal.App.3d at p. 1502.)

The imposition of the gang conditions here was constitutionally proper because those conditions were specifically tailored to address the potential of future criminality associated with minor's present and future identification with a notorious street gang. Accordingly, probation conditions Nos. 9 and 30 are not vague, overbroad, ambiguous, or illegal. We therefore find the juvenile court did not act arbitrarily when it imposed the gang-related probation conditions.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

GAUT
J.